that was required of them to satisfy the contract *i.e.* to obtain JTC's approval to use the premises for manufacturing wooden container sleeves before the completion date and no JTC approval was forthcoming before the contractual completion date, December 8.

It is clear from the Sale Agreement that the time fixed for completion, December 8, had not been made of the essence of the contract. The 2nd Defendants had to obtain JTC's approval before the completion date and if no approval was forthcoming before the contractual completion date then at any reasonable date thereafter. The 2nd Defendants were under an obligation to take all reasonable steps to obtain such approval from JTC.

The evidence clearly shows that the delay in getting JTC's approval was due entirely to the 2nd Defendants trying to obtain approval for the storage of stuffed containers when it had been clear to them as early as October 12, 1983, that the JTC would not approve the application.

The 2nd Defendants are in breach of the Sales Agreement when they repudiated the contract on December 23, 1983 and demanded the return of all monies paid. The 2nd Defendants are consequently not entitled to the release of the said sum of $50,000 as it is forfeited.

I order that the $50,000 be released to the 1st Defendants. The costs of the Plaintiffs and of the 1st Defendants are to be paid by the 2nd Defendants.

Order accordingly.

Solicitors: *Selvadurai Pala Krishnan & Partners; Wee Swee Teow & Co.; Manjit Darshan & Partners.*

JOEL SALAYSAY v. MEDICAL LABORATORY (PTE.) LTD. & ANOR.

[O.C.J. (Chua J.) October 4, 1984]

[Singapore – Suit 1331 of 1979]

Professional Negligence – Reports on blood tests – Whether reports of 1st defendant wrong – Duty of Medical Laboratory and referring doctor – Damages.

Tort – Defamation – Reports on blood tests – Duty of Medical Laboratory and referring doctor – Publication – Defence of qualified privilege – Damages.

Medical Profession – Reports on blood tests – Duty of Medical Laboratory and referring doctor.

In 1978 the plaintiff, then a student, applied to the Canadian High Commission in Singapore for a student visa. He went to see Dr. B.K. Sen, the 2nd defendant, for medical examination. The 2nd defendant sent him to the 1st defendant for a VDRL blood test. The 1st defendant submitted a report dated May 2, 1978 to the 2nd defendant: "VDRL – Reactive (2 units) and FTA/ABS – Reactive." The plaintiff, on being told by the 2nd defendant that his blood was syphilitic, went to another laboratory (A.M. Lab.) for a blood test – VDRL (RPR). The result was negative. The 2nd defendant then asked the 1st defendant to do another test on the plaintiff. The results (PB 3) were the same: "VDRL: Reactive (2 units); FTA/ABS: Reactive." The plaintiff was told by the 2nd defendant that he was obliged to forward the report of the 1st defendant to the Canadian High Commission. A.M. Lab. sent a blood sample of the plaintiff for confirmation of their test results to the Department of Pathology, which reported: "NRT – Non-Reactive; FTA – Non-Reactive." The plaintiff was told by the 2nd defendant that he had informed the Canadian High Commission that the plaintiff "Has evidence of syphilis – serological". PB 3 was later confirmed by the Dept. of Pathology. Subsequently the plaintiff got a favourable report dated June 28, 1978 from the Middle Road Hospital: "VDRL – Non-Reactive: FTA/ABS – Non-Reactive". Eventually the plaintiff was granted the visa on July 18, 1978.

The plaintiff then sued the two defendants for damages for negligence and defamation. The plaintiff proceeded against the 1st defendant, the 2nd defendant having settled the claim for $15,000.

Held: (1) the 1st defendant was merely asked to do the blood test and report on it as it found it and do nothing more;

(2) it was the duty of the referring doctor, the 2nd defendant, to diagnose whether it was syphilis or a BFP reading after all the clinical assessments had been done. This duty did not extend to the 1st defendant. The plaintiff had failed to substantiate his allegation that the findings of the 1st defendant were wrong;

(3) the publication to the Canadian High Commission was not publication of what the 1st defendant said but rather the conclusions or diagnosis of the 2nd defendant and the use by him of the word "syphilis";

(4) there was neither recklessness nor malice which would defeat the defence of qualified privilege;

(5) the plaintiff's claim against the 1st defendant was therefore dismissed with costs.

CIVIL SUIT.

Miss Noorjahan Kassim for the plaintiff.

M.A. Valibhoy for the 1st defendant.

Cur. Adv. Vult.

Chua J. : The plaintiff claimed damages against the two defendants for negligence and defamation.

Before this action came on for hearing the second defendant, Dr. B.K. Sen, settled with the plaintiff by paying $15,000 damages and the plaintiff withdrew his action against Dr. Sen.

The short facts are these. In 1978 the plaintiff, then a student, applied to the Canadian High Commission in Singapore for a student visa to study psychology at Brandon University, Manitoba, Canada. He was given a panel of doctors to see for a medical examination. He went to Dr. Sen on April 29, 1978. Dr. Sen sent him to the first defendants, The Medical Laboratory (Pte) Ltd. (The Medical Lab.) for a VDRL (Venereal Disease Research Laboratory) blood test to be carried out on the plaintiff. Two types of tests were carried out on April 29 – VDRL and FTA/ABS (Fluorescent Treponemal Antibody-Absorption). The Medical Lab. submitted a report dated May 2, 1978, (PB 1) to Dr. Sen. The results were: "VDRL – Reactive (2 units) and FTA/ABS – Reactive." The report was signed by Dr. Tan Kheng Khoo.

The plaintiff was called and he went to see Dr. Sen on May 5. Dr. Sen said that he had received the results of the blood test from The Medical Lab. and that the plaintiff's blood was syphilitic. The plaintiff was stunned as he knew for a fact that he did not have syphilis and he told Dr. Sen this. Dr. Sen then told him to go to the A.M. Laboratory with a letter. The plaintiff went there the same afternoon. A.M. Laboratory conducted a blood test – VDRL (RPR). On the same day A M Laboratory handed the plaintiff their report (PB 5). The result was negative.

The plaintiff brought the report PB 5 immediately to Dr. Sen who told the plaintiff that The Medical Lab. would be asked to do another test. Dr. Sen wrote to Dr. Tan Kheng Khoo on May 8 (PB 2) to " .....repeat his VDRL and FTA if necessary and confirm with SGH". The plaintiff went to The Medical Lab. with his father, Fileman Salaysay. A sample of blood was taken from the plaintiff. The VDRL test and the FTA/ABS test were repeated that afternoon. That same afternoon half of the plaintiff's blood was sent to the Department of Pathology. The Medical Lab. forwarded their report to Dr. Sen on May 9 after doing another test on May 9 (PB 3). The results were: "VDRL : Reactive (2 units); F.T.A./ABS : Reactive". The report PB 3 was sent to Dr. Sen before the receipt of the report from the Department of Pathology which was given on the May 11 (PB 4). The results were: "VDRL – weakly reactive (without dilution); FTA/ABS – Borderline".

The plaintiff was again called to see Dr. Sen who told him that the results of the second blood tests done by The Medical Lab. were again positive and that he was obliged to forward the report of The Medical Lab. to the Canadian High Commission.

The plaintiff immediately went back to the A.M. Lab. on May 17 and told them of the conflicting results of the blood tests. A.M. Lab. did two tests. The results were:

"RPR (Rapid Plasma Reagin) – Non-Reactive; FTA/ABS – Non-Reactive" (PB 6).

The blood sample of the plaintiff was also sent to the Department of Pathology by A.M. Lab. for confirmation of the results. On May 18, the Department of Pathology reported: "NRT – Non-Reactive; FTA – Non-Reactive" (PB 7).

On May 17, the plaintiff then went and informed Dr. Sen of the results of the tests carried out by A.M. Lab. The plaintiff was then informed that Dr. Sen had already sent the Preliminary Medical Examination form duly filled to the Canadian High Commission (Ex D.1). The findings of the Medical Lab. were attached. In the column "Conclusions or Diagnosis" Dr. Sen wrote "Has evidence of Syphilis – Serological".

The plaintiff then telephoned the Canadian High Commission and was told that his visa had not yet been approved. On another occasion he was informed that the visa would not be issued until his medical examination was satisfactory. He then received a copy of a letter dated June 1, 1978, addressed to Dr. Sen from the Canadian High Commission (Ex P.1). In that letter Dr. Sen was requested to supply additional information that was required by the Commission's Medical Service in Singapore.

The plaintiff then went to consult solicitors who said that they would get in touch with Dr. Sen and the Canadian High Commission. During this period the plaintiff went for further blood test of his own accord.

He went to the Singapore Blood Transfusion Service to donate blood. At his request the Senior Haematologist of the Blood Transfusion Service gave him the results of the blood tests carried out (PB 8). The letter dated June 17, 1978, stated "results of all the investigations are normal. You may if you wish donate blood again."

At the request of Dr. Sen the plaintiff went to The Middle Road Hospital on June 21, for a serological test for syphilis. The report dated June 28 was: "VDRL – Non-Reactive; FTA/ABS – Non-Reactive" (PB 9).

On June 29, 1978, armed with a letter from his solicitors (AB 3) he went to see the First Secretary in the Canadian High Commission and asked for the visa to be issued to enable him to leave for Canada immediately. He was told that the visa would be issued if he was certified cured of syphilis.

A week later Dr. Sen requested the plaintiff to go for a further blood test at the Department of Pathology. The report dated July 7 was: "VDRL – Non-Reactive; FTA/ABS – Non-Reactive" (PB 10).

The visa was finally granted on July 18, 1978, and the plaintiff left for Canada on August 12, 1978.

The plaintiff pleaded that The Medical Lab. was negligent in that (a) they failed "to conduct, on two separate occasions, a proper blood test on the plaintiff"; (b) they failed "to take, on two separate occasions, all reasonable and effective measures whether by independent examination, confirmation or otherwise, to ensure that there would be no risk of a false report"; (c) they made "the report and conveying the same to the Second Defendants on two separate occasions when they knew or ought to have known that the results would be passed on to the Canadian High Commission who, in the First Defendants' reasonable contemplation, would place reliance upon its correctness in making their decision with respect to the Plaintiff's visa application."

The plaintiff further pleaded that (a) The Medical Lab. falsely and negligently wrote and published of the plaintiff the following words in their Laboratory Reports dated May 2, 1978, and May 9, 1978, (PB 1 and PB 3):

"Tests	Results
V.D.R.L.	Reactive (2 units)
F.T.A./ABS	Reactive";

(b) these findings were sent to Dr. Sen who in turn reported the same to the Canadian High Commission; (c) The Medical Lab. again reported falsely and negligently that the plaintiff's blood was reactive; (d) by those words (in the reports) The Medical Lab. and Dr. Sen meant and were understood to mean that the plaintiff's blood was syphilitic and which same words impute that the plaintiff at the material time is suffering from venereal disease and the contents of the report was subsequently also conveyed to the Canadian High Commission; (e) by reason of the said publication, the plaintiff encountered undue difficulties in obtaining the student visa, sustained pain and suffering in having to undergo six blood tests, suffered anguish and has been injured in his reputation.

In their Defence The Medical Lab. pleaded that on each of the occasions of publication alleged was an occasion of qualified privilege.

In his Reply the plaintiff alleged that in publishing the words set out in their reports of May 2 and May 9 the first defendants, The Medical Lab., were actuated by express malice in that the first defendants published the words complained of recklessly and that they had no honest belief in the truth of the said words.

The plaintiff maintains that the findings of the blood tests by The Medical Lab. were wrong.

In the first test the laboratory technician drew the blood and did the VDRL test and the FTA/ABS test was carried out by the biochemist. On May 8 the same laboratory technician repeated the VDRL test and the biochemist repeated the FTA/ABS test. Having obtained the same results Dr. Tan Kheng Khoo together with the laboratory technician and the biochemist went through these two respective tests on May 9 on the same serum. That was the third time that these tests were done. The same results were obtained.

Dr. Tan Kheng Khoo is a well qualified person. He is a Consultant Pathologist to the Department of Pathology. His qualifications are – A.M.; M.B.B.S.; D.C.P.; Dip. Path.; F.A.C. Path.; F.R.C. Path.; F.R.C.P.A.; F.R.C.P. Before buying The Medical Lab. in 1971, he was for thirteen years working in the Department of Pathology and became the Head of the Department.

Dr. Tan Kheng Khoo never saw the plaintiff after the May 8 nor did he see the reports PB 5 to PB 10. He was not even aware of these reports except that he was told of PB 5 (the report of A.M. Lab. of May 5) by the plaintiff's father on May 8. It was the plaintiff's father who asked Dr. Tan why was it that The Medical Lab. found that the plaintiff's blood was syphilitic whereas A.M. Lab. found otherwise. Both the plaintiff and his father agreed

that Dr. Tan did not tell them that the plaintiff was syphilitic. The plaintiff said that it was Dr. Sen who told him that and that the first time he heard the word "syphilis" from Dr. Sen.

The plaintiff contracted chicken pox in April 1978. The plaintiff said he told Dr. Sen of this. The plaintiff said that his father asked Dr. Tan whether chicken pox would affect the result of the test and "Dr. Tan did not say categorically whether yes or no."

Dr. Tan said that he did not discuss with the plaintiff his medical history. It was not his duty. He was not told by Dr. Sen that the plaintiff had had chicken pox. Dr. Sen in the Preliminary Medical Examination Form (Ex D.1), which was returned to the Canadian High Commission, did not mention that the plaintiff had just recovered from chicken pox. Dr. Seet Ai Mee, who was a partner in A.M. Lab. in 1978, said that she did not recall the plaintiff mentioning chicken pox otherwise she would have been alerted for possible BFP (biological false positive). Dr. Jimmy Sng, Head of Serological Laboratory, Department of Pathology, did not remember if the plaintiff told him that he had had chicken pox but he heard it from Dr. Sen just before Dr. Sen sent the plaintiff to see him on July 7, 1978. It seems to me that the probabilities were that the plaintiff did not mention to Dr. Tan that he had had chicken pox in April 1978.

The Medical Lab. used the Wellcome Laboratories' way of reporting. It has not been suggested that the Wellcome Laboratories' reporting system is a wrong or improper way. The Department of Pathology adopted a different way of reporting. Dr. Jimmy Sng said that he knew the Wellcome Laboratories' system, it was a different system to the one used by the Department of Pathology which used a system that was an internationally agreed way. In 1979 the Wellcome Laboratories switched to the internationally agreed system of reporting, the one used by the Department of Pathology in 1978. Dr. Tan said that if he had to report the result which he found in 1978 now his result would be the same as the result of the Department of Pathology and Dr. Jimmy Sng said that it would be compatible.

The A.M. Lab. did only the VDRL (RPR) test on May 5 (PB 5). The Medical Lab. did both VDRL and FTA/ABS tests on April 29. Dr. Roger Pang Heng Mun, who was the Medical Officer at Middle Road Hospital from 1973 to 1980 and now in private practice, said that RPR test and VDRL test were similar tests and that RPR test was considered more sensitive than VDRL test in picking up syphilis. In cross-examination Dr. Roger Pang was asked –

"V: 1st report of Med. Lab. was on 2/5/78, the 2nd report of Med. Lab. was 9/5/78, when the 2nd test specimen was sent to G.H. and their test shows

FTA/ABS Borderline, what would be the likely result of FTA/ABSSif done by A.M. Lab. on May 5?" –

and he answered –

"Assuming that the patient is either syphilitic or showing a BFP the result could have been borderline or reactive."

"V: The plaintiff suffered from chicken pox 3 weeks to a month before the 1st test done by Med. Lab., also the plff not certain if he went for small pox innoculation sometime around that period. What would be the result of the test carried out after the chicken pox or small pox vaccination?"

His answer was –

"The test would either be non-reactive or showing BFP.

Dr. Jimmy Sng was asked this question by counsel for the plaintiff:

"K: PB 4 and PB 5, there are 3 test reports in these two pages. The difference in time is the collection of the blood specimen between PB 4 and PB 5 in 3 days. Yes these 3 tests had different reports. Would you say that there is something wrong with one of the tests?"

His answer was:

"I would point out that VDRL test and the RPR test are different tests and I am not surprised at differences in results."

Counsel for The Medical Lab. referred Dr. Jimmy Sng to the report of The Medical Lab. "FTA/ABS: Reactive; VDRL: Reactive: 2 units" and to the Department of Pathology's report of May 11, 1978 "VDRL: Weakly reactive (without dilution; FTA/ABS: Borderline" (PB 4) and the doctor replied:

"Looking at these results it showed there is some reactivity. I would say that the serum is behaving in an abnormal way; not the patient."

Counsel for The Medical Lab. referred the doctor to A.M. Lab. report (PB 5) of May 5 "VDRL (RPR) Negative" and asked this question:

"V: This test done 6 days after the test done by Med. Lab. and 5 days the test done by G.H. (PB 4, bottom half). If A.M. Lab. had carried out FTA/ABS test on May 5 would have given a borderline reading or reactive reading."

His answer was:

"I would have expected something of a borderline reading."

The plaintiff called a number of medical witnesses. It is clear from their evidence that something was wrong with the plaintiff's blood during the period April 29 and May 11, 1978. The Medical Lab. was merely asked to do the blood test and report on it as they found it and do nothing more. If a repeat test is required this again is done at the request of the referring doctor. In this case three tests in all were carried out by The Medical Lab. and also a confirmatory test by the Department of Pathology. Four tests in all were done in a period of ten days. The Medical Lab.'s findings PB 3 had been confirmed by the Department of Pathology (PB 4).

The medical witnesses agreed that the interpretation of the results of the blood tests done by the laboratory is to be done by the referring doctor. In this case it was the duty of the referring doctor Dr. Sen to diagnose whether it was syphilis or a BFP reading after all the clinical assessments had been done. This duty did not extend to The Medical Lab. at all. Dr. Tan Kheng Khoo never used the word "syphilis" to the plaintiff or his father.

The plaintiff has failed to substantiate his allegation that the findings of The Medical Lab. were wrong.

It was suggested by counsel for the plaintiff that The Medical Lab. did not send the report of the Department of Pathology PB 4 to Dr. Sen and that The Medical Lab. was negligent in the manner in which they reported the test results to Dr. Sen. There is no substance at all in this allegation.

The plaintiff also alleged that The Medical Lab.'s actions in preparing the reports PB 1 and PB 3, which were subsequently conveyed to the Canadian High Commission, whereby they falsely and negligently wrote and published the words complained of were actuated by express malice in that they published the words complained of recklessly and that they had no honest belief in the truth of the said words nor had they withdrawn the said words complained of nor had they given or offered any apology or correction or explanation.

Each and everyone of the medical witnesses have said that, as the reports PB 1, PB 3 and PB 4 stood, it would be impossible to say whether the plaintiff was suffering from syphilis or was it a case of BFP. How then can an ordinary person draw any meaning let alone the natural meaning of the words complained of?

On the question of republication which is Ex D.1, the report by Dr. Sen to the Canadian High Commission at page 2 under "Conclusions or Diagnosis", Dr. Sen had written "Has evidence of syphilis – serological". The reports PB 1, PB 3, PB 4 submitted by The Medical Lab. to Dr. Sen, no where in these reports was the word "syphilis" used. The publication to the Canadian High Commission was not publication of what The Medical Lab. said but rather the conclusions or diagnosis of Dr. Sen and the use of the word "syphilis". If there was any defamatory matter of the plaintiff which was published it was done by Dr. Sen to the Canadian High Commission and not from The Medical Lab. to the Canadian High Commision.

It was Dr. Tan Kheng Khoo who suggested to Dr. Sen that if he had the same results he would like to send the serum to the Department of Pathology for another test and that was why Dr. Sen wrote the letter PB 2. Dr. Tan Kheng Khoo took all the steps that were possible to confirm his own results and the Department of Pathology confirmed the findings of Dr. Tan that there was something wrong with the plaintiff's blood.

There was neither recklessness nor malice which would defeat the defence of qualified privilege.

It would appear that the plaintiff would go to any length to meet the defence of qualified privilege. It was reckless of the plaintiff to have alleged malice on the part of The Medical Lab. when there is no iota of evidence to substantiate it.

The plaintiff's claim against The Medical Lab. is dismissed with costs.

Claim dismissed.

Solicitors: *Leo Fernando; Murphy & Dunbar.*